Supp. 575, it appears that the better view is that the number of persons or families occupying the dwelling is immaterial in such a case. *Hutchison* v. *Ulrich* (1893) 145 Ill. 336, 34 N. E. 556; *contra, Harris* v. *Roraback* (1904) 137 Mich. 292, 100 N. W. 391 Where a covenant prohibited any building other than a dwelling house, a hospital was held to be a violation. *Smith* v. *Graham* (1914) 161 App. Div. 803, 147 N. Y. Supp. 773. A covenant that premises shall be used for residence purposes only would seem to have been violated by the erection of a church. *Cf. Hisey* v. *Eastminster Church* (1908) 130 Mo. App. 566, 109 S. W. 60; *Crofton* v. *St. Clement's Church* (1904) 208 Pa. 209, 57 Atl., 570. Although a convent may be more than a mere residence and embody within it a school or a church, the term does not necessarily connote more than a dwelling for a religious community. See *Scott Co.* v. *The Archbishop of Oregon* (Ore. 1917) 163 Pac. 88. Since the restriction is not against names but against uses, *cf. Smith* v. *Graham, supra*; *Scott* v. *The Archbishop of Oregon, supra,* the decision of the court in the principal case, in view of the peculiar facts, would seem to be correct.

SPECIFIC PERFORMANCE—ORAL CONTRACT TO DEVISE—SERVICES AS PART PERFORMANCE.—Intestate orally agreed with plaintiff's stepfather in 1865, that she would adopt plaintiff and make plaintiff her sole heir, in consideration of the control and custody of the child, and her services as a daughter. The plaintiff fully performed, but was never adopted, and no will was made. The plaintiff brought a bill to be declared the equitable owner of all the property left by intestate. Prior to 1905, in California, an oral contract to make a will was valid. *Held,* as the evidence clearly established the contract, plaintiff was entitled to the property. *Steinberger* v. *Young* (Cal. 1917) 165 Pac. 432.

The general rule is that a contract to devise realty to another or to make him an heir must be in writing, since it is a contract for the transfer of an interest in land, and covered by the Statute of Frauds. Gardner, Wills (2nd ed.) 68. But the California Civil Code did not require a writing in such a case, prior to the amendment of 1905. *Rogers* v. *Schlotterback* (1914) 167 Cal. 35, 138 Pac. 728. In most jurisdictions, however, an oral contract to devise property cannot be enforced, *Pond* v. *Sheean* (1890) 132 Ill. 312, 23 N. E. 1018, unless it is removed from the operation of the statute by part performance. *Gladville* v. *McDole* (1910) 247 Ill. 34, 93 N. E. 86. Putting the promisee in possession of the property in pursuance of the contract is a sufficient part performance. *Smith* v. *Pierce* (1892) 65 Vt. 200, 25 Atl. 1092. But the courts are divided as to whether the surrender of a child for adoption, together with filial services, is a sufficient part performance to remove the bar of the statute. Those cases which hold that it is, seem to proceed on the theory that the non-performance of the agreement would work a fraud on plaintiff, who could not be put in *statu quo, Sharkey* v. *McDermott* (1887) 91 Mo. 647, 4 S. W. 107; *Healy* v. *Healy* (1900) 55 App. Div. 315, 66 N. Y. Supp. 927; and, therefore, a trust is imposed on the land. *Van Dyne* v. *Vreeland* (1858) 12 N. J. Eq. 142. The better view and the weight of authority seem to be that performance by the child will not take the oral contract out of the statute, since such services are not clearly referable to the contract. *Snyder* v. *French* (1916) 272 Ill. 43, 111 N. E. 489; *Grant* v. *Grant* (1893) 63 Conn. 530, 29 Atl. 15; *Shahan* v. *Swan*

(1891) 48 Oh. St. 25, 26 N. E. 222; 11 Columbia Law Rev. 93. Where the contract relates to both realty and personalty and is inseparable, it follows that the agreement may not be enforced as to the personalty either. *Dicken* v. *McKinley* (1896) 163 Ill. 318, 45 N. E. 134. Ordinarily no fraud on the plaintiff would result, as he receives the benefit of support and education, and may recover the value of his services in *quantum meruit*. *Ellis* v. *Cary* (1889) 74 Wis. 176; 42 N. W. 252; 17 Columbia Law Rev. 155. The principal case seems correct, in the absence of any statute.

WILLS—EXECUTION—ATTESTATION AT REQUEST OF TESTATRIX.—The testatrix, who could speak or understand only the Creek language, requested a witness who understood both Creek and English, to attest her will and to request the two other witnesses to attest. On the probate of the will, *held,* this did not comply with the Oklahoma statute which required that three attesting witnesses subscribe the will at the request of the testatrix. *Hill* v. *Davis* (Okla. 1917) 167 Pac. 465.

Although there is no general statutory requirement that the witnesses to a will must subscribe only at the request of the testator, nevertheless, even in the absence of statute provisions the testator should request the witnesses to subscribe, so as to refute any inference of fraud. This request, however, may be indicated by word or conduct and no formal request is necessary. *Woodstock College of Baltimore* v. *Hankey* (Md. 1917) 99 Atl. 962. But even where the statute requires that the witnesses must subscribe at the request of the testator, N. Y. Decedent Estate Law (N. Y. Consol. Laws, c. 18) § 21, subd. 4, the courts are inclined to uphold substantial compliance with the statute. *Matter of Nelson* (1894) 141 N. Y. 152, 36 N. E. 3; *Matter of Will of Cottrell* (1884) 95 N. Y. 329. Similarly, in the analogous case of a statutory requirement of publication of the will by the testator to the witnesses, a substantial compliance with the statute has been held sufficient. *Brinkerhoff* v. *Remson* (N. Y. 1841) 26 Wend. 325; *Perham* v. *Cottle* (1916) 98 Misc. 48, 162 N. Y. Supp. 21. The reason for this attitude of the courts would seem to be a desire to prevent unreasonable hardship; but where there is any evidence of fraud, or if an equivocal inference can be drawn from the conduct of the testator, the statute will be construed literally. *Matter of Kenney* (1917) 179 App. Div. 258, 166 N. Y. Supp. 478; 1 Schouler, Wills (5th ed.) § 329. In the principal case, though the intention of the testatrix seems to have been carried out faithfully, the court was warranted in requiring strict compliance with the statute, since the rigts of the testatrix should be guarded carefully where the transactions are carried on through interpreters. See *Stein* v. *Wilzinski* (N. Y. 1880) 4 Redf. 441.